



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE MAXWELL  
TECHNOLOGIES, INC.  
DERIVATIVE LITIGATION**

**LEAD CASE NO. 13CV966 BEN  
(RBB)**

**(Derivative Action)**

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' EX PARTE  
APPLICATION TO EXTEND  
THE DEADLINE TO FILE AN  
AMENDED COMPLAINT**

**This Document Relates to:  
ALL ACTIONS**

**[Docket No. 56]**

On June 18, 2014, Lead Plaintiffs Sameer Agrawal and Walter Kienzle applied ex parte for an order extending their June 26, 2014 deadline to amend the complaint to 60 days after the resolution of a writ proceeding in state court. (Docket No. 56.) In the alternative, Plaintiff requests a fourteen-day extension of time to file an amended complaint. Defendants<sup>1</sup> filed an Opposition to the application on June 20, 2014, and Plaintiffs filed a Reply on June 24, 2014. (Docket Nos. 57, 59.) For the reasons stated below, Plaintiffs' request to extend the deadline to file an amended complaint to 60

<sup>1</sup>Defendants Jose L. Cortes, Burkhard Goeschel, Jean Lavigne, David J. Schramm, Robert L. Guyett, Mark S. Rossi, Yon Yoon Jorden, Roger L. Howsmon, Kevin S. Royal, George Kreigler III, and nominal defendant Maxwell Technologies submitted an Opposition that Defendant Van M. Andrews joined. (Docket Nos. 57, 58.)

1 days after resolution of the writ petition is **DENIED**, but Plaintiffs' request to extend  
 2 the deadline fourteen days is **GRANTED**.

### 3 **BACKGROUND**

4 On October 30, 2013, the Court denied Plaintiffs' motion to stay this action  
 5 pending resolution of a related state court shareholder derivative action. On November  
 6 1, 2013, the related state court derivative action was stayed.

7 The writ petition pending in state court was filed by Stephen Neville on  
 8 November 14, 2013. Neville is a plaintiff in related state court shareholder derivative  
 9 litigation.<sup>2</sup> He is not a plaintiff in this action. Neville's writ petition seeks to enforce  
 10 a shareholder inspection demand under California Corporations Code § 1601.<sup>3</sup>  
 11 Defendants demurred to the writ on January 15, 2014. The demurrer is set for hearing  
 12 on July 18, 2014.

13 On May 27, 2014, the Court granted Defendants' motion to dismiss this action  
 14 because Plaintiff failed to meet the pleading requirements of Federal Rule of Civil  
 15 Procedure 23.1(b)(3). The Court granted Plaintiffs leave to file an amended complaint  
 16 within 30 days. Plaintiff's amended complaint is due on June 26, 2014.

### 17 **DISCUSSION**

18 Plaintiffs are seeking a stay of this case pending resolution of a writ proceeding  
 19 in state court.<sup>4</sup> "[T]he power to stay proceedings is incidental to the power inherent  
 20 in every court to control the disposition of the causes on its docket with economy of  
 21 time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S.  
 22 248, 254 (1936). In determining whether to grant a stay, a court considers: (1) "the  
 23 hardship or inequity which a party may suffer in being required to go forward;" (2)

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 25 <sup>2</sup>*In re Maxwell Technologies, Inc. Derivative Litigation*, Lead Case No. 37-2013-00043884-  
 26 CU-BT-CTL.

27 <sup>3</sup>*Neville v. Maxwell Technologies, Inc.*, No. 37-2013-00075582-CU-WM-CTL.

28 <sup>4</sup>Although labeled an application to extend time, Plaintiffs acknowledge it is a request to stay  
 by citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) and noting the Court's power to stay  
 proceedings.

1 “possible damage which may result from the granting of a stay;” and (3) “the orderly  
2 course of justice measured in terms of the simplifying or complicating of issues, proof,  
3 and questions of law which could be expected to result from a stay.” *CMAX, Inc. v.*  
4 *Hall*, 300 F.2d 265, 268 (9th Cir. 1962). In this case, Plaintiffs bear the burden of  
5 establishing the need for the stay. *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (“The  
6 proponent of a stay bears the burden of establishing its need.”).

7 Although the parties have failed to specifically address all of the factors above,  
8 the Court finds that Plaintiffs have failed to establish the need for the stay. Any  
9 hardship Plaintiffs might suffer is speculative and does not justify an indefinite delay  
10 in this proceeding.

11 Plaintiffs argue that documents obtained in the writ proceedings will provide  
12 additional facts demonstrating Defendants’ wrongdoing and Plaintiffs should be  
13 allowed to use those facts in an amended complaint. However, the hardship Plaintiffs  
14 may suffer in being required to go forward before resolution of the writ petition is  
15 speculative in two respects. First, it is unclear whether Plaintiffs’ forthcoming  
16 amended complaint will lack sufficient factual allegations to proceed absent the  
17 information Plaintiffs hope to obtain through Neville’s writ petition. Second, obtaining  
18 information relevant to this case through the writ proceeding is, at best, questionable.  
19 Not only would Neville have to succeed in his writ petition, but the results of the  
20 inspection would have to disclose facts demonstrating some wrongdoing relevant to  
21 this case. Additionally, Neville would have to be willing and able to disclose that  
22 information to the Plaintiffs in this case.

23 The Court will, however, grant Plaintiffs’ request for a fourteen-day extension  
24 of time to file the amended complaint.

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**CONCLUSION**

Plaintiffs' request to extend the deadline to file an amended complaint to 60 days after resolution of the writ petition is **DENIED**. Plaintiffs' request to extend time to file an amended complaint fourteen days is **GRANTED**.

**IT IS SO ORDERED.**

DATED: June 25, 2014

  
HON. ROGER T. BENITEZ  
United States District Judge